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To Promote the Efficient Administration of Justice

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"Our system of courts is archaic and our procedure behind the times. Uncertainty, delay and expense, and above all the injustice of deciding cases upon points of practice, which are the mere etiquette of justice—direct results of the organization of our courts and the backwardness of our procedure—have created a deep-seated desire to keep out of court, right or wrong, on the part of every sensible business man in the community."—*Roscoe Pound.*

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Editorial

It is impossible to dissociate judicial reform from "win the war" work. In these days, when the utmost economy of time is imperative, every saving in every field is of national value. The savings through concilation procedure set forth in the June number of the JOURNAL open a wide avenue for concerted effort toward a not far distant goal.

This number deals with the same practical needs from another angle. Our first article, on the "presiding judge system," is probably as valuable a contribution on judicial efficiency as has ever been written. Judge William A. Huneke, the author, has been all through the experiences involved in city courts. He writes only of what he has intimate personal knowledge. In his city, and in others to which he refers, a considerable measure of efficiency—a very great measure in comparison with former conditions—has been attained by the application of what is the mere common sense of the business world.

In these courts the full measure of usefulness of every judge has been won by a simple voluntary organization which permits one judge to assume responsibility for administration and to direct the activities of his colleagues. The experience gained through voluntary organization of judges should be emphatically useful. Wherever it has been tried it points the way to complete judicial reform. Once a group of judges adopt businesslike methods the results are so striking as to make any recession unthinkable. It may be that, in the progress of our evolution, we shall see a good deal of voluntary and non-legislated reform. This is to be welcomed. In time it will lead to complete unification and the full measure of rule-making power, the need for which is the more clearly felt the more judges grapple with their obvious responsibilities. A higher degree of service on the part of judges will persuade the public to be more generous in delegating the powers which are needed to rehabilitate our judiciary.

We are tempted also to moralize on commercial arbitration as a "win the war" measure. Here is something of tremendous import just coming over the lawyer's horizon. Commercial arbitration is likely for a long time to be limited to large trade centers and yet it is something which every lawyer should understand, and which all bar associations should interest themselves in because it inevitably tends to affect the relationship of the profession to the business world.

Arbitration must not be looked upon as a competitor of the courts, nor as a means for avoiding inefficient court organization and procedure. It is rather an extension of our machinery of adjudication to perform a work which the courts can never perform as well. When this is understood the courts themselves will cooperate with arbitrators, limiting their responsibility to a general supervision and to the determination of questions of law.

For the determination of fact in business controversies no court can expect to cope with arbitrators selected by the parties and expert in the particular branch of trade involved. When facts are determined by these voluntarily accepted arbitrators, and questions of law by the nearest court, the business world will possess the best conceivable means for the speedy adjustment of its ordinary disputes.

The Presiding Judge System

The purpose of this article is to show what has been done, and, therefore, what can be done by the judges of courts of general original jurisdiction in the large cities of our country, without legislative aid, in improving the administrative functions of their courts, to the end that the work of such courts may be simplified, systematized and expedited.

This delimitation necessarily excludes an examination of the modern city courts which exist in several of our large cities, because they are creatures of statute. It also excludes consideration of the splendid administrative success which the judges of these courts have achieved. The legislative conception of these courts and their development by the judges, deserve unstinted praise since they mark distinct forward steps in modernizing the judicial structure. It also excludes any excursion into the domain of legislative or constitutional activity, but does not forbid calling attention to a few examples of preposterous legislative creations which still survive in some of our large cities, in order that a better grasp may be had of conditions with which judges have had to contend who earnestly desired improvement. A few of these examples must suffice:

1. In one of our large cities, twenty-four judges are engaged in the trial of various actions, civil and criminal, but instead of being members of one court, there are eight separate, distinct and wholly independent courts. One of these courts has jurisdiction of civil actions involving more than $2,000; also of misdemeanors involving a punishment severer than six months' imprisonment; of felonies; and appellate jurisdiction of judgments of lower courts. Another of the courts has jurisdiction in civil actions up to the sum of $2,000. Another has jurisdiction of all civil actions involving more than $100, and also probate jurisdiction. Another has jurisdiction of felonies and misdemeanors in which the punishment is more than six months' imprisonment, and appellate jurisdiction from all inferior criminal courts. Another tries only misdemeanors when the punishment cannot exceed six months' imprisonment. Still another tries petty misdemeanors in which the punishment cannot exceed thirty days in jail. Another has civil jurisdiction in actions which do not involve more than $100. Finally, there is a court with jurisdiction over delinquent and dependent children. But aside from the fact that there are these eight independent courts to transact this business, each judge of each court is wholly independent of his fellow judges. When the constitution or legislature or both have created such a confused plan, there is comparatively little that can be done by the judges of the courts. Yet, something can be done by them, for in each of two of these courts are five judges who ought to find a way, independent of statutory aid, of simplifying and systematizing and facilitating the work of their courts.

2. In another of our large cities, the existing judicial system is even more lamentable than the one just described. In this city there are no less than ten different courts with perhaps twice that many judges. There are three common law courts of practically the same jurisdiction, though called by different names: one the Superior Court; another the Court of Common Pleas; and the third the City Court. In addition to these are two equity courts of precisely the same jurisdiction, but here again, each bearing a different name: one the Circuit Court of —— and the other the Circuit Court No. 2 of ———. Then there is a criminal court of exclusive criminal jurisdiction. These six courts are manned by ten judges who, together, constitute another independent court whose trial work consists in passing upon motions for new trial in criminal

cases and in hearing and deciding disbarment proceedings. Its chief function lies in the management of the work of the six courts, which it does by assigning its members to these various courts. In addition to these seven courts in the city, are the Orphans' Court, with probate jurisdiction, the Juvenile Court and other inferior courts. To the credit of the bar and the bench of this city it should be said that for a long time they have been and are now engaged in an earnest effort to bring about a consolidation of all these courts into one court.

3. In still another city there is a State court of general jurisdiction, common to all the counties of the State. As the city grew and additional courts became necessary, the legislature, instead of creating additional judgeships of that court, created wholly separate and distinct courts, each of limited, though largely co-ordinate jurisdiction with the original State court. The litigant, or his attorney, is permitted to choose the court in which he will bring his action, with the result that while in one year the State court, with one judge, received 1,407 new actions, its rival court, with five judges, had but 3,387 new actions filed with it. In this city, the different judges of the same court act entirely independently of each other. Each receives certain cases; each makes up his own calendar; each calls his own jury; and each tries out his own docket. There is a total lack of co-operation among the judges in the discharge of the court work.

It will not be necessary to cite other cases, since, in a very general sense, the above instances are typical of the old order which exists in a more or less modified form in a number of our large cities, and it must be perfectly obvious, from this description, that this old order is wofully unsystematic; that it is cumbersome and complex; that it is wasteful of time and money; and that it tends to bring reproach upon the courts and upon the law. It became so intolerable to some of the judges about ten to fifteen years ago, that realizing the hopelessness of relief by legislative help, they undertook the improvement of those conditions by their own rules and voluntary action, with the result that a plan was evolved which has since become known as the Presiding Judge System. Under the system then existing, even in states in which there was but one court of general original jurisdiction, whenever there were two or more judges of that court, the work was arbitrarily divided by the judges into common law, equity, criminal and miscellaneous departments. These departments, by mutual agreement, were then apportioned among themselves. Inequality of labor inevitably followed. One department would be abreast of its work, while another might be hopelessly behind. One judge would have leisure while another never could catch up with his work. This arrangement was inequitable to the judges and worked a great wrong to litigants. Therefore, the two-fold principle upon which the Presiding Judge System was constructed, was that every court, composed of two or more judges of equal powers, should be so organized that its judges should be equally occupied in the discharge of the court work, and that this work should be accomplished as systematically, expeditiously and economically as would be consistent with thorough and conscientious work.

It became at once evident that to avoid inequality of labor, all judges must be ready to do all kinds of court work. It seemed that there must be a surrender of the desire to specialize. It was also evident that the system must have a head and that he must be empowered to distribute the work of the court among the judges so that there would be equality. The result was the selection of one of their number as their head, who was designated the Presiding Judge, to whom the remaining judges yielded obedience in the matter of discharging such court work as he assigned to them.

In the practical application of the Presiding Judge System, greater difficulties

will be encountered in a court of general original jurisdiction than in one of limited jurisdiction, so that if it has been demonstrated to be successful in a court of general original jurisdiction it may safely be inferred that it is applicable to any other court. Instead of describing, in abstract fashion, the method of transacting business under this system, it may be well to visualize a court of from five to ten judges actually at work under it. The court which will be described will be a court of general original jurisdiction, having cognizance of all common law, equity and criminal cases; of all extraordinary writs and remedies; of all insanity inquests; of insolvency; of naturalization; of divorce; and of all probate and juvenile matters. Some of the work is *ex parte*, some contested; some cases are tried by jury, others without a jury.

Judge Adams has been selected as the first Presiding Judge of this court for the period of one year. In some courts this period is shortened to six months, purely a matter of personal choice. His first duty is to assign work to all the other judges in order that they may be kept occupied and the work of the court performed. Perhaps the first question to arise will be who shall settle the pleadings in civil actions. In some courts this work is assigned to one judge, while in others it is deemed best to have it done by all the judges. In the court here being described, this work is assigned by the Presiding Judge to all the other judges. On every Thursday forenoon, the clerk of court makes up a list of all new cases in which some motion or a demurrer has been filed. This list is sent to the Presiding Judge who, in open court, assigns these cases equally to all the other judges. The clerk then makes up a separate motion docket for each judge, containing newly assigned as well as old cases theretofore assigned in which some issue is to be heard. Once a case has been assigned to a judge, it remains before him until the issues are fully made up and the case is ready for trial. The motion docket is called by each judge on every Saturday morning. If a judge should have a trial unfinished at the close of court on Friday which, for any reason, should proceed on Saturday instead of going over until the next week, he postpones the call of his motion docket for one week. If his motion docket contains matters which require immediate attention, such are disposed of, either by the Presiding Judge himself, or are assigned by him to some other judge or judges.

The writer favors the settlement of pleadings by all the judges, as above outlined, rather than by one or two of them, for several reasons. One is that, in this manner, the work is done more systematically, since all accumulated motions are disposed of on one certain day of every week. Under the other plan, counsel are ofttimes obliged to attend court daily or even more than once a day to dispose of issues of law, which is burdensome at least. This work can be done with much greater expedition and economy on one day of the week. Another reason is that the judges are thus kept in direct touch with pleading and practice and with the cases that are being prepared for trial. Not infrequently it happens that a case is practically disposed of by the ruling upon a motion or a demurrer, made upon exhaustive argument. A later step may involve the same principle and the judge, familiar with it, disposes of it without re-argument. Under this plan each judge exercises his own judgment and follows his own initiative in the settlement of pleadings, whereas under the other plan, a judge is practically compelled to adopt the law as announced by the judge who settled the pleadings, even if he disagree. Then, too, the danger of passing upon a certain class of motions perfunctorily, when one judge does nothing but that day after day, is lessened by this plan, since under this arrangement, the judge knows his own cases individually.

The next step is setting the trial calendar, and every judge knows that a trial calendar is the administrative stumbling block over which thousands of judges have

come to grief. In some courts a trial calendar is prepared once a week; in others, once in two weeks; but perhaps in most, once a month. The problem, on the one hand, is to set a sufficient number of cases for trial so as to keep courts and jurors occupied and, on the other hand, not to set so many, that the cases cannot be reached for trial, for that would compel parties, witnesses and counsel to be in attendance needlessly, day after day, awaiting the calling of the case for trial. The court here being described has adopted the plan of arranging a trial calendar once each month for the next ensuing month. The clerk of court prepares a list of all cases which have been noticed by counsel for trial, and on a stated day, usually about the middle of the month, the Presiding Judge, in open court, arranges the calendar, day by day, for the next ensuing month, setting as many cases each day as he thinks can be tried and as will keep the judges occupied. This court has been able to keep practically abreast of its trial work, month by month, ever since it was thus organized, several years now, trying both jury and non-jury cases. To do this it was often necessary to call in a judge from an adjacent county. Jury trials, as a rule, are bunched together and tried out by all the judges at the same time, and when disposed of for the month, non-jury trials are taken up also by all the judges. In some courts, organized as this one, it is the practice to set jury and non-jury cases side by side, some of the judges trying jury cases and others non-jury cases, as Presiding Judge may find it convenient to assign them. This latter plan generally aids the dispatch of trial work when there are say ten or more judges in the court, for in a court of that size there are always emergency questions to be disposed of without jury and which the Presiding Judge has not time to hear. Therefore one or two, perhaps three, judges should be free to try these emergency matters and when not thus engaged, try non-jury cases. This is another illustration of the flexibility of the Presiding Judge System. One judge may be trying a jury case to-day and at its conclusion may be assigned a non-jury case or an emergency motion. Some judges excel in jury trials and others in non-jury trials and these qualifications will be remembered by the Presiding Judge, working for the greatest efficiency of the court.

The next step is the actual trial of cases. It is the duty of the Presiding Judge to call a panel of jurors who report to him on the first day of the jury term. Of the panel called, he retains a sufficient number to permit fifteen to eighteen jurors for each court trying jury cases. Jurors, however, are not divided into these small quotas and assigned permanently to different court rooms but are one entire body of jurors under the constant direction of the Presiding Judge. Assuming that seven judges are to try jury cases, then the first seven cases on the trial calendar for the day are assigned, one to each of the seven judges and fifteen to eighteen jurors sent to each court room. The other judges are assigned either emergency matters or non-jury cases. As soon as a jury has been selected in any court room, the remaining jurors are returned to the Presiding Judge, who either holds them in the jury rest room or excuses them until the afternoon session or for the day, depending on the likelihood of needing them for the afternoon session or next day. As soon as a case has been submitted to the jury in any court room, the judge notifies the Presiding Judge, who immediately assigns the next case on the calendar and sends in jurors. When the jury in the first case returns with a verdict, its members are returned to the Presiding Judge, by whom they will be sent out to the next judge ready for a jury. This process continues until jury trials are all disposed of, whereupon non-jury cases are taken up in the same manner. One principle, always kept in mind by the Presiding Judge in the assignment of cases for trial, is that as far as possible, a case is assigned to the

judge who settled the pleadings. This is done for the manifest reason that he is familiar with the case and the issues involved and has established the law of the case in his rulings upon motions and demurrers and will try the case more expeditiously than a judge who is wholly unacquainted with it. The merit of this plan is that it permits the maximum amount of work in the minimum time. If one or more departments tried criminal cases only and others civil jury cases only, the criminal departments, by reason of long trials, might find it impossible to complete the calendar as soon as the civil departments. The criminal departments would then fall behind, while the civil departments would be up. But when all the judges try either civil or criminal cases, as assigned by the Presiding Judge, clearly all will finish approximately at the same time. That is, no one judge will be at leisure while another is swamped with work.

The various contested motions following the trial, such as motions for new trial, motions for judgment notwithstanding the verdict, motions in arrest of judgment, motions to re-tax costs, motions to settle statement of facts on appeal and the like, are placed on the motion docket of the judge who tried the case and are heard on Saturday.

Having disposed of the time of the judges, other than the Presiding Judge, it may be well now to look at his other duties. He has general charge and disposition of all the business pending in the court. He presides when the judges sit *en banc*. He receives and disposes of all communications and applications addressed to or intended for the court. He draws, receives, has control over and discharges all jury panels. He has charge of and disposes of all insanity and juvenile hearings, of all uncontested divorce cases and of all *ex parte* civil, criminal, probate and miscellaneous applications. This looks like a full program and it is so, but the systematic division of his work enables him to accomplish it with comparative ease.

The first business attended to by the Presiding Judge at the opening of court is the assignment of cases for trial, and at any later hour of the day, he will always interrupt his work to assign out a case for trial. As soon as the assignments have been made in the morning, he hears all probate applications, usually *ex parte*. If there are contested matters of probate or other character, they are passed until the *ex parte* business is disposed of, and these contested matters usually occupy the remainder of the morning. On two afternoons of the week he hears juvenile matters and on the remaining afternoons, uncontested divorce cases. Insanity hearings, of course, are emergency in their character and are heard on any afternoon. If the Presiding Judge should have more to do than he can dispose of, he may call upon any other judge for assistance and, *vice versa*, if he should be unoccupied and there are non-jury trials waiting to be heard, he puts in his time thus.

The entire flexibility of this system to meet any situation must be apparent to everyone. There are no hard and fast rules, but every rule yields to a more compelling situation. It sometimes happens, for example, that a contest in the probate of an estate may require a day, or two or three. Manifestly, if the Presiding Judge were compelled to hear this contest, all other matters must suffer, so he treats it as a trial and assigns it to another judge. This is also true of applications for an injunction or other extraordinary writ or the appointment of a receiver. The Presiding Judge likewise has unlimited discretion in the re-arrangement of the trial calendar and in placing cases upon the calendar which were not at issue when it was first set, and the like, to the end that complete justice may be administered unfettered by any rule.

At the end of the year, Judge Adams is relieved of the duties of Presiding Judge and is succeeded by Judge Bean for a year,

who, in turn, is succeeded by Judges Clark, Day, East, Field, Gray, Hunt, and so on, until each judge has acted as the Presiding Judge. But here, too, the rule may yield to efficiency. If one judge is found who has unusual executive ability and is not averse to acting as Presiding Judge permanently, he may be retained. The same is true with regard to the work of the Juvenile Court. Objection is sometimes made to changing this judge from year to year, and it is conceded that it ought not to be done. However, so long as this is a court of general original jurisdiction and the judges are selected generally for that work, it stands to reason that every judge is not a specialist in Juvenile Court work, and it is entirely likely that no one of them would be. If one of the judges desired to specialize in that department and had the peculiar qualifications necessary to a successful discharge of that important work, unquestionably he would be given that work permanently, in which event the Presiding Judge, thus relieved, could take on other general work. If the work of the juvenile department required the entire time of a judge, well and good; and if not, he would try cases when not thus engaged, as the Presiding Judge should assign them to him.

This system has been in effect in Spokane, Washington, for about eleven years; in Oakland, California, about six years; in Seattle, Washington, five years; and in Portland, Oregon, two years. In all these cities, before the plan was adopted, certain departments were hopelessly swamped, while others were up with their work and had some leisure; now all the judges are practically abreast of their work. Wherever the plan has been tried it has commanded enthusiastic support. In several other cities there is a modified form of the Presiding Judge System, such as San Francisco, Los Angeles and Oakland, California; Birmingham, Alabama; St. Paul, Minnesota; St. Louis, Missouri; Omaha, Nebraska; and doubtless others.

The writer can perceive no valid reason why this system cannot be successfully applied in any court of more than two judges and no matter how many more, and ventures the assertion that under it more work will be transacted than under any other existing plan. The suggestion, published in the April number of this JOURNAL, of a plan for a Metropolitan District Court, does not depart seriously from the system here described. While the writer of this article is inclined to disagree with the statement in that article that a court of thirty judges is too large for a single head, yet that contention may be laid aside for the present. The flexibility of the Presiding Judge System is such that if experience demonstrated that a Presiding Judge could not efficiently direct a court of thirty judges without further organization, such further plan could promptly be adopted. The suggestion in the Metropolitan plan of several divisions of the court is not objectionable so long as the fundamental idea is not lost sight of, that these divisions are but arms of the court, provided to discharge the work of the whole court more efficiently. This means that there must be the greatest flexibility in the shifting of judges from one division to another, to the end that the work in all divisions be kept equally abreast. And this must be so even if a judge who has specialized in one division, must be sent, for a time, to another division. A member of the court should not be permitted, at his own choice, to limit his duties to a fractional part of the whole, but his personal preference must be sacrificed for the general good. If specialization is permitted one judge, manifestly it must be permitted all judges, and if all judges are permitted to specialize, there would, in effect, be a lapse into the very evils of the old order from which the Presiding Judge System has found the escape. Specialization would destroy the *esprit de corps*, the team work, so necessary to the successful operation of the *whole* court.

Most lawyers and judges are prover-

bially conservative and, consequently, slow to adopt innovations. Objections to the Presiding Judge System may occur to them when reading this description, and straightway the plan and all thought of it will go into the discard. That was true in one of our cities, in which some of the judges wished to try this plan but were stoutly opposed by others. After a year's controversy, the plan was adopted by a majority of one in nine judges. Those opposing doubted its efficacy. After it had been tried a year or two, the bench, and bar as well, were unanimous in championing it. It actually accomplished the results which had been predicted by its supporters, *viz.*, a change from congested to clear dockets. There is, frankly, one objection which may obtain in some courts, *viz.*, the impossibility of compelling any one judge to do his share of the work if he be disposed to shirk. Fortunately, that situation is the rare exception. But it may be asserted without fear of contradiction, that there is no impulse so powerful to arouse an appetite, yes, an enthusiasm for work, as the example of several brother judges all eagerly bent on clearing the docket.

The writer of this article wishes it distinctly understood that he does not champion the Presiding Judge System as one *ne plus ultra*. There is much beyond. What he does contend is that this system is the best yet devised by the voluntary act of trial judges without legislative aid. The bench, the bar and the legislatures of the country should set their faces firmly toward simplifying and systematizing the courts, their practice and procedure. Certainly the existence of several independent courts of co-ordinate jurisdiction in one city ought to be abolished forthwith and replaced by but one court. And what good reason is there against taking the further step of thus unifying the courts of an entire state? One step toward that goal has already been taken in the states in which there is now but one court of general original jurisdiction, in the whole state, with one or more judges for each county, and it functionates as well as other systems with a score of courts. But the perfection of this certain development will only be reached when there will be but one and only one court of justice for an entire state, with complete jurisdiction, original and appellate, having one head in the state, with power to direct all its judges where to work and what to do, to the end that the administration of justice shall be stripped of all intricacy, and instead, shall be characterized by simplicity, system, expedition, economy and efficiency. —*William A. Huneke, Judge of the Superior Court, Spokane, Washington.*

Give Courts a Fair Chance

The majority report of the Senate Judiciary Committee on the American Bar Association bill to permit the United States Supreme Court to formulate rules of procedure for suits at law contains this seemingly irrefutable argument:

"It is an anomaly to intrust a tribunal with grave and responsible duties and deny it the power to determine the manner in which these duties shall be discharged. The Senate would not for one moment tolerate the idea of having some outside body determine the way in which it shall do its business. Each house of Congress and every legislative body in the country makes its own rules of procedure. The same is true of substantially every administrative body, state and federal. Congress is constantly passing laws to be executed by one of the executive departments and providing that the head of the department shall make such rules and regulations as may be necessary to carry the law into operation. The courts seem to stand almost alone in this respect. These great tribunals intrusted with the delicate and responsible duty of interpreting and administering the law are certainly qualified to determine the mode and manner which will be best calculated to enable them to discharge their responsibilities surely and promptly."

Commercial Arbitration in England

The following account of commercial arbitration as practiced in London and other British trade centers is condensed from Bulletin XII, A. J. S., to which readers are referred for a more detailed account. Our Bulletin XII contains the most complete and authoritative report on this subject which is extant.

One of the most striking facts concerning British litigation and one commonly overlooked by writers, is the almost total absence of commercial disputes from the calendars of the principal trial court. This is only in part explained by the fact that improved methods of procedure, by eliminating all unnecessary trials, effect a disposal of ninety-seven per cent of the court's large volume of business without trial.

The practice of commercial arbitration which has developed in England in the past forty years saves the courts a tremendous amount of business. Figures are not obtainable, but certainly more than 100,000 causes are arbitrated every year.

Arbitration must not be confused with conciliation or mediation, with compromise or adjustment by mutual concessions. "It is a regular and recognized method sanctioned and governed by law, for the determination of rights and the enforcement of remedies, by which a party aggrieved may ascertain and obtain all that he is entitled to from his opponent, without instituting an action in the courts of law."

Practically every trade agreement made in England or covering the purchase or shipment of goods to be delivered in England, contains an agreement to submit disputes to arbitration. One cannot build or rent a house, ship goods by rail or water, or buy or sell in quantity without signing a contract which contains such a clause.

Arbitration has been practiced in England from the times of the Saxons. In 1697 a statute was enacted to further its purposes; in 1837 and again in 1854 there were additional acts. The extended modern use of arbitration may be said to date from the American Civil war, which produced so many disputes in the cotton trade that the Liverpool Cotton Association set up an arbitration committee and members inserted in all their contracts a clause requiring disputes to be submitted to the Arbitration Committee of their Association.

The success of the plan strengthened the position of the Association in the trade, and that, in turn, increased the power of the Arbitration Committee so that practically every difference that arose in the Liverpool cotton market between buyers and sellers, whether English or foreign, came to the Arbitration Committee for settlement. Although the parties had a strict legal right to revoke their submission, the disciplinary powers of the Association were sufficient to make parties feel they were better advised to submit if they wished to continue doing business in that market.

Other trades were quick to see the advantage of this system of organized arbitration. The Liverpool Corn Trade Association soon established a similar committee, and then the General Brokers' Association followed suit. The London markets next took it up; the associations existing in the Corn Trade, the Oil Seed Trade, the Cotton Trade, the Coffee Trade, and others, set up their own arbitration committees, and, year by year, other associations either adopted the plan or came into existence with trade arbitration as one of their avowed objects. The various exchanges all molded their committees on similar lines—the Stock Exchange, the Coal Exchange, the Produce Exchange, and others. Then professional bodies began to see the advantage of providing a medium for settling disputes at home instead of by strangers, and the Architects,

the Engineers, the Estate Agents, the Auctioneers and other such groups established domestic tribunals.

In 1889, after a dozen years of agitation, an Act was passed consolidating and revising the law of arbitration and providing in a schedule a simple set of rules to govern the procedure in all arbitrations where no agreement to the contrary was made by the parties. The need for such a simplification in the law is eloquent of the extent to which the principle of arbitration had spread through the English business world. A letter in the London Times in 1883 (probably from Lord Bramwell) said: "It is strange that those who call for changes in the procedure of our courts rarely allude to arbitration. Yet what would be their condition but for the fact that whole trades and professions have virtually turned their backs upon them and uniformly settle their disputes by arbitration?

Today there is not a trade or professional organization in England that does not provide some means for the arbitration of disputes that arise among members or between members and others, and frequently between non-members engaged in similar work. It is not surprising, therefore, that by this means a great volume of litigation is avoided and commercial disputes kept out of court.

The opportunity to benefit by arbitration has been one of the factors leading to the organization of almost every existing line of trade. One of the purposes of organization is to remove sources of friction between buyer and seller and this is accomplished in great measure through the use of uniform drafts of contract, embodying the collective experience of the trade. In every such contract there is a clause by which the parties agree to submit disputes to arbitration.

The Corn Exchange employs this simple clause:

"Goods sold ex ship to arrive to be taken without refusal, but any dispute arising out of this contract to be settled by arbitration in the usual manner, as per rules of the London Corn Trade Association."

The Corn Trade Association has a complete and efficient code of arbitration rules which are thereby incorporated in the contract.

The contract form of the London Oil and Tallow Trades' Association contains this clause:

"Any dispute on this contract to be settled by arbitration in London as soon as it may arise, in accordance with the rules endorsed upon this contract."

And the rules are found on the back of the instrument.

In every trade there has been developed a body of experts available as arbitrators, men who have mastered the mysteries and intracacies of their respective trades. They may be active or retired business men. There are in the main two types of arbitration tribunals. One is composed of arbitrators chosen by or for the parties for the purpose solely of a particular dispute. The other consists of arbitrators appointed to serve for certain associations for a fixed period of months or years although their relation to any single arbitration is identical to that of arbitrators chosen *ad hoc*.

Enforcibility

At common law an agreement to arbitrate, or a submission as it is called, was no different in legal effect than any other agreement. A party to it could at any time revoke the arbitrator's authority, in which case the arbitration was abortive; or a party could, in spite of his agreement to arbitrate, begin a lawsuit upon the same subject-matter and so render the submission useless. In either case the only remedy for the party aggrieved was an action for damages caused by the breach of agreement. The Courts would not enforce the agreement itself, because of a theory that it was in derogation of the powers of the courts and therefore unholy. In the early days judges, as well as other court officers, were paid by fees on the volume of business that came to them and being only human they looked with disfavor upon any

limitations on their powers. It is easy to appreciate the psychology of the legal maxim: "The office of a good judge is to extend his jurisdiction." And speaking of the suspicion with which courts of law regarded arbitrations, Lord Campbell observed: "It probably originated in the contests of the different courts in ancient times for extent of jurisdiction, all of them being opposed to anything that would altogether deprive any one of them of jurisdiction." Judges no longer have the same interest to serve, but like some other doctrines in the law, this one survived the conditions out of which it arose, and we hear it solemnly proclaimed in American Courts today that any agreement to "oust the jurisdiction of the courts" such as a submission to arbitration is "against public policy."[1]

In England the inherited antipathy of courts to arbitration has been cured by a course of legislation which, though extending over a period of nearly two centuries, is now gathered and codified in the Arbitration Act, 1889. The two outstanding features of that law are that a submission to arbitration cannot be revoked, and that an award of the arbitrators may be enforced like a judgment of the courts. The opening section of the Act reads:

"A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge, and shall have the same effect as if it had been made an order of court."

The effect of this is that a person who has agreed to arbitrate is bound to arbitrate and to accept the award of the arbitrators appointed, and cannot revoke their appointment unless he is relieved by the court. Leave to revoke the authority of an arbitrator will, however, be granted for good cause; the principal grounds on which an application for that purpose is made are interest, bias, or misconduct, on the part of the arbitrator, such as to prevent his giving a fair decision.

There are two methods provided in the Act for practically carrying out the enforcement of an agreement to arbitrate. The first is the right given either party to block any action begun in court by the other upon the same subject-matter, by a motion to stay the proceedings. Section 4 of the Act is as follows:

"If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings."

Armed with this weapon, the defendant in the legal proceedings can force his opponent to resort to arbitration for his remedy and not to the courts. Conversely, the party demanding relief may find difficulty in bringing his opponent into an arbitration. For such a case, Sections 5 and 6 make the following provisions:

"Sec. 5. In any of the following cases: (a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator; * * *

(c) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him; * * *

Any party may serve the other parties or

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[1] An exhaustive examination of the early common law has led Mr. Julius Henry Cohen, of the New York City bar, to the conclusion that the belief that the law is hostile to arbitrations is quite fallacious. Mr. Cohen informs the writer that Coke and others appear to have blundered in their efforts to trace the decisions. The result of this modern study of the earliest sources will be presented soon in a book written by Mr. Cohen, who has been energetic in encouraging commercial arbitration in the metropolis. The investigation has an important bearing on certain decisions by our state supreme courts adverse to the legality of agreements to submit future controversies to arbitration. It may appear that something has been written into state constitutions prejudicial to arbitration which is without historical warrant.

the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

"If the appointment is not made within seven clear days after the service of the notice, the court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

"Sec. 6. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—(a) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new abritrator in his place; (b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent; provided that the court or a judge may set aside any appointment made in pursuance of this section."

By virtue of this the delinquent party may find himself subject to a judgment rendered without adequate presentation of his case and needless to say the presence of the two sections in the Act is itself sufficient explanation of the fact that their powers are seldom invoked.

These sections insure the holding of an arbitration and the rendering of an award whenever parties sign an agreement containing an arbitration clause similar to those quoted above. Their binding force is completed by the following section of the Act (Section 14):

"An award on a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect."

This gives the remaining party the benefit of all the ordinary methods of execution of which he can avail himself without further legal proceedings.

Backed up by this powerful statute, an arbitration clause in a contract is not a thing to meddle with, for it is easier to enforce than almost any other part of the contract. But there is more than just the statutory influences to support the arbitration clause; even the escapes permitted by the statute are not sought except in cases of necessity and good faith. There is a general opinion in the business community against the breach of arbitration agreements, which is equally potent with the Act. In addition to that, there is the disciplinary power over their members, of all the associations and exchanges that provide some form of arbitration tribunal, which the members find it to their interest to conciliate. In short, a submission to arbitration in England, instead of being regarded askant as contrary to public policy, is favored both by law and opinion and clothed with an enforceability it never possessed at common law.

Procedure

Any dispute which may be the basis for a civil action, except a suit for divorce, may be arbitrated. In practice most of the disputes so submitted are those arising on questions of fact concerning the quality, condition or value of property at the time of delivery. In the ordinary course of business, disputes over facts are far commoner than disputes of law. Some other fields of controversy are whether the conduct of a party, not strictly in accordance with his contract, is nevertheless a reasonable compliance therewith; whether there have been unreasonable delays in fulfilling a contract, and if so what injury has been caused thereby; whether certain services are worth the amount demanded for them, for instance in commissions; questions of the extent or division of business territory; questions of the value of goods or property, real or personal; these are all questions primarily of fact, which cannot always be decided by scrutinizing the terms of the contract. For their decision it seems almost self-evident that the

ideal tribunal is one possessing first-hand knowledge of the values, facts, customs, technical terms and course of dealings prevailing in any particular line, if there can be found together with this knowledge the fairness and unprejudiced effort to give a square deal that a judicial tribunal should exercise.

Until the last quarter of the nineteenth century the only tribunal offered by the English law courts to satisfy this desire was a jury, chosen at random (except in the time of Lord Mansfield), and though often rigidly fair-minded, yet usually hopelessly unable to form any but the vaguest conception of the technical facts involved. This condition has now been changed and trials are now possible in the courts before a judge alone or before an official referee. But these concessions were avowedly made in an effort to compete with the practice of arbitration, to which business men were driven in order to escape from the folly of jury trials in contract actions, a practice which they found so satisfactory that they continue in their wickedness today.

In most instances the parties select their own arbitrators without any restriction upon choice, or agree on a single arbitrator. When each party is represented, and the arbitrators do not agree, they choose an umpire, and in case of inability to agree upon an umpire, the association or the court will make the appointment. A party dissatisfied with the decision may appeal to the Committee of Appeal of the particular association under whose contract form he is arbitrating. In many associations the governing board selects from twenty to thirty members to serve on the Committee of Appeal, and this committee, usually by ballot, creates a Board of Appeal comprising four or five of its members for the particular appeal.

The appeal is then heard by the Board of Appeal and their decision is final on the facts. It is still open to the parties to have any points of law which arise stated to the High Court, from which an appeal lies to the Court of Appeal and to the House of Lords. The facts found by the arbitrators or the Board of Appeal of the Association have the same conclusiveness as if they had been found by a jury.

In certain associations a different procedure prevails. There may be a permanent Board of Appeals of twelve by whom all appeals are heard sitting in a body, though the attendance of all is not necessary. In associations covering a variety of allied trades it is the practice to have an Appeal Board of three persons, a broker, a dealer, and a merchant, all engaged in the particular line involved. In one association the president is limited to an approved list of about 200 members for his selection. The permanent Board of Appeal is favored because the older and more experienced men in the trade are selected for it, and experience gives them familiarity with the procedure and training in the use of judicial powers.

In a few associations the choice of arbitrators in the first instance is restricted. In the London Sugar Association the Council hears all arbitrations without a right to appeal. The Liverpool Cotton Association has 24 arbitrators who act in rotation. The parties do not know who will serve and the arbitrator sees only the cotton without knowing the parties concerned.

In most of the professional organizations the contracts provide that the president of the association shall appoint an arbitrator. The high standing of the executive is sufficient guaranty of a wise exercise of power. Some organizations publish an approved list of arbitrators as a guide to intending parties. Such a list is published by the Timber Trade Federation, in whose list each name is followed by a specification of the woods in which the man is expert.

In most arbitrations the procedure is regulated by the Act of 1889. In a schedule to the Act is a set of rules which govern the procedure. Section 2 of the Act reads:

"A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under submission."

The first two of these rules relate to the number of arbitrators to act:

"1. If no other mode of reference is provided the reference shall be to a single arbitrator.

"2. If the reference is to two arbitrators, the arbitrators may appoint an umpire at any time within the period during which they have power to make an award."

The arbitrators need not be named in the original agreement to arbitrate, which may have been made before the dispute arose; this is covered by the following clause in Sec. 27 of the Act:

"Submission means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named or not."

The general feeling among experts in arbitration is that a sole arbitrator is far better than two or three; when each side appoints its own arbitrator, he is very apt to feel that he must advocate the side he represents, instead of acting impartially, and that leaves it to the umpire or third arbitrator after all to give the deciding vote. However, many persons seem to feel their interests are better safeguarded if they are represented in the discussion by their own arbitrator, so the practice is very general to provide in the submission for each side to appoint its own. If the two disagree, they have power and it is their duty, to appoint an umpire to settle the matter. If they cannot agree on an umpire the Court will, on application, name one, or, in a trade arbitration, the association will do so.

As to the manner of presenting the case, the provisions are very brief. The arbitrators have power to administer oaths or take affirmations of parties and witnesses appearing (Sec. 7 of the Act), but if they consider it proper they may hear witnesses without oath (Rule 7 of the Schedule). Parties are bound, subject to any legal objection, to produce before the arbitrators all books and documents which may be called for and to do all other things which the arbitrators may require (Rule 6 of the Schedule), and parties may obtain the presence of witnesses with or without documents by subpoena, just as in a trial at law (Sec. 8 of the Act).

These general phrases clothe the arbitrators with authority to conduct the arbitration pretty much as they see fit, and there is no general uniformity. In each of the trade associations, certain customs have been established, however, which are more or less followed. For instance, in some lines it is customary for the parties to write out their entire case and leave the arbitrators to find an award upon the documents submitted, without holding any formal meeting or hearing; in other lines the converse is the rule—there are no written statements, but everything must be orally presented; in still others these two are combined—after a written statement from each side the arbitrators call for evidence upon the controversial points, either orally or in writing. Some associations permit the parties to be represented by counsel; others discourage such representation. It is very usual, however, in either event, for parties to be assisted by their solicitors in getting up their case. When hearings are necessary they can be arranged to suit the convenience of the parties; out-of-town witnesses can be heard at the most convenient time for them; and generally the matter is so arranged that the parties feel free to present their case in their own way and in their own time. The check on any abuse of this is the increase in the fees payable to the arbitrators for their time and services.

In arbitrations upon quality of materials, there are generally neither written statements nor formal hearings; the arbitrators (if there are more than one) meet and compare a sample portion to a standard lot of the same material, and render their award, giving or refusing an allowance on the price and fixing the amount, if any; in this they are guided

solely by their knowledge of the material under discussion. This is the summary method followed in the thousands upon thousands of arbitrations which take place annually over consignments of wheat, rye, oats, oil-seed, timber, jute, hemp, sugar, coffee, ice, butter, meat, and innumerable other articles of commerce. Instead of lengthy correspondence, usually with persons oversea, or protracted litigation, these differences are settled in a few minutes or hours by experts who handle the actual material at the time of dispute, and not similar stuff or mere verbal descriptions some months or years later. These quality arbitrations in the trade associations are the most informal of any, as the object is to get the matter settled at once, as well as to get it settled at all. Business relations must go on, and they will go on more smoothly without outstanding differences. Arbitrations on other points are apt to be more formal, and they range all the way from a simple statement by each side, to all the formalities and complications of a lengthy trial, as in the big arbitrations on building contracts or on insurance claims which are held before celebrated King's Counsel who, if not actually judges, are in line for appointment.

The award must be final, it must be certain and not ambiguous, it must be possible, reasonable, and consistent and it must not call for the doing of an illegal act. If it does not conform to these requirements the Court has power to remand the matters to the reconsideration of the arbitrators, or it has power, if there has been some misconduct of the proceedings before award, to set the matter aside completely. However, a court will not lightly disturb the award, but will sustain it whenever possible, on the ground that the parties have chosen their tribunal and ought to abide by its decision.

The Act gives arbitrators large powers with respect to costs and they are permitted to fix their own fees. The trade associations usually require that the award be written on an official form, thus enabling the losing party to have a certificate which can be passed back to the party from whom he bought the material in support of a claim for allowance. The loss may be passed through several successive hands until it reaches the person responsible for the defect.

Assistance From Court

There is no appeal from a final award in an arbitration. Many of the trade associations do, it is true, provide an appeal within the association, but that is merely a step toward finality—part of the proceeding—and at its conclusion the award is either upheld or altered and then is final. But while there is no appeal, strictly speaking, there is a method by which the opinion of the courts can be obtained upon certain points that come up in an arbitration. Any point of law that arises may be stated to the court for its decision. There are two ways in which this may be done: the arbitrator may do it in the course of the proceedings before him, or he may be ordered by the court to do so (under Sec. 19 of the Act), and then he must be guided in framing his award by the law applicable as defined by the court; or he may find all the facts and state his final award in the form of a case for the opinion of the court upon the question of law involved, or he may be ordered by the court to do so (under Sec. 7 of the Act). In the latter method he may, if he chooses, state his award in the alternative, depending upon the court's decision on the law; in any event, his part in the arbitration is completed when he states his award, and the court in framing its judgment will completely adjudicate the rights of the parties as based upon the facts found. From that judgment an appeal can be taken on up to the House of Lords. An opinion given under Sec. 19 is not a judgment, however, and therefore not appealable.

Appeals within the associations and applications to the courts on points of law are extremely few in proportion to the great number of arbitrations. The fees imposed on appeals and cases stated are severe for the purpose of discouraging such

action. For stating a case a fee of twenty-five guineas, or more, in the discretion of the Board of Appeal, is exacted, and from this a solicitor is paid for stating the case in proper legal form. The parties must then see to briefing counsel if they wish to have the point argued before the court.

A wide use of arbitration has also come about in recent years under proceedings specified in various new Acts. In some cases arbitration is optional, in some it is compulsory. Differences arising in the exercise of the power of public domain by public authorities and public utilities are invariably settled by arbitration, thus excluding from the courts a considerable volume of judicial business which in this country is dealt with in formal manner with judge and jury. Other statutes in the "compensation" group are the Housing of the Working Classes Acts, 1890-1909, the Housing, Town Planning, etc., Act, 1909, the Regulation of Railways Act, 1868, the Light Railways Act, 1896, the Metropolis Water Acts, 1872-1902, and there are many others.

A second group of statutes under which disputes are arbitrated contains recent Revenue Acts, introducing new schemes of taxation which give rise to many differences over the valuation of property. A third group includes new social legislation such as the Workmen's Compensation Act, 1906, under which all differences as to the amount of compensation payable to an injured workman or his dependents must be referred to arbitration. In these cases the county judge is usually selected as arbitrator but juries are unknown.

The trade associations do not account for all the arbitrations taking place in London. There are many lines of business in which arbitration clauses are habitually inserted in contracts not because of any association agreement or rule, but because of established custom and confirmed belief in the benefits of arbitration. A few of these lines of business are insurance, shipping, agriculture and building. An interesting instance of this class of cases is found in the arbitration of remuneration to be paid for salvage of vessels wrecked anywhere in the world, under the Committee of Lloyds. Contracts for salvage present a hundred chances for dispute and the difficulty of prosecuting litigation before remote tribunals makes arbitration especially useful, aside from the expertness of the arbitrators obtainable in London. In this connection Mr. Rosenbaum, author of Bulletin XII, A. J. S., mentions his attendance upon an arbitration between a Norwegian shipowner and an American contractor upon the salving of a vessel wrecked in the Caribbean Sea, when a dispute involving $30,000 was adjudicated in one afternoon. In this business the Committee of Lloyds usually selects as arbitrator one of the half dozen or more of leading King's Counsel specializing in admiralty business. In insurance disputes and those arising in the building trade the practice is to appoint a leading barrister. A barrister who wins recognition as an authority in certain fields of commercial law is likely to have an assured income as arbitrator.

After considering all the lines of business in which contracts are standardized and more or less uniform, there is still a vast residue of business activities which consists of individual contracts made solely for the particular occasion. If these are written out, it is very rarely that an arbitration clause will not be found in them, and if they are not written out, it is the first instinct of the business man, if a dispute arises, to try and get a submission to arbitration from his opponent. The custom is firmly established, with the authority of common-sense and tradition behind it, and it extends down to the smallest dealings as well as up to those of stupendous magnitude.

An attempt extending over several decades to provide an arbitration tribunal for the general public by the London Chamber of Commerce has met with very little success. This is attributed in part to the competition from trade associations and in part to the fact that the rules do not permit the parties to select the arbitrator or arbitrators. So much hope for developing the practice in this country has

been based upon the so-called Court of Arbitration fathered by the London Chamber of Commerce that it is important that the meager success of the institution and the reasons therefor should be understood.

As to enforceability, the situation at present is that in England, under the Arbitration Act, a judgment may be entered on any award, whether that award is on an arbitration which took place in or out of England. Two parties might, therefore, enter on an arbitration in any country in the world, and the award could be taken to England and entered as a judgment, making property in England available for its satisfaction. The basis for this is that a submission to arbitration is a contract between the parties of which some of the terms are left to be supplied by the arbitrator, the submission and the award together constituting a complete contract which, by the Act, is given the effect of a voluntary confession of judgment. Few countries are as liberal in this regard as England, but English awards are, whether because of the local law or special treaty, enforceable in Germany, Denmark, Switzerland, Rumania, Brazil, Belgium, Sweden, Greece, Mexico and six of the self-governing British dependencies. It is curious that in practically all these cases an English judgment would be valid only as the basis for a suit leading to a local judgment, and vice versa, whereas an award may be reciprocally entered up at once as a judgment without further suit.

The English demand for swift justice led in 1895 to the creation of a special list in the King's Bench Division of the High Court of Justice which is popularly known as the Commercial Court. To this branch a judge specially versed in commercial litigation was assigned and a procedure was established which rivals that of arbitration in informality. The list was started under the able management of Mr. Justice Mather, "a judge intolerant of technicalities" who "swept away written pleadings and technicalities of every sort, coming straight to the point of every dispute and bringing the court into high favor with the London merchants who needed it." The court has provided an ideal procedure and has met with a fair measure of success, but has not drawn back to the courts the volume of business which it was expected to. Arbitration has increased steadily in volume and the business of the Commercial Court has actually declined in recent years.

Advantages of Arbitration

One of the conspicuous advantages of arbitration lies in the obliteration of all questions of jurisdiction. It is quite impossible to conceive of any development of judicial procedure proper which could permit regular courts to compete with arbitration in this respect.

The greatest single advantage possibly lies in the fact that decisions are made by men trained to a degree of expertness which cannot be realized in any other manner than through intimate connection with a narrow and technical branch of business. The questions best suited to arbitration are those mainly of fact, such as questions of quality, quantity, condition, value and trade customs, and it is obvious that a better approximation to the truth can be made by a specialist of his own knowledge than by a jury at second hand. Even a judge is inferior for this purpose, supposing the jury is dispensed with; he would often have to decide between conflicting testimony of experts before even selecting the standards with which to approach the decision of a specified question of commercial fact. Even the organized court which is able to assign a judge versed in commercial law and usages to a special branch is at a disadvantage compared with the more specialized and differentiated knowledge of business men who keep in touch, collectively, with a hundred or more lines of trade. The difficulties which we realize in admiralty and patent litigation, and other classes of causes in which much reliance must be placed upon expert testimony, based largely on hypothetical questions, illustrate this disadvantage.

Another great advantage of arbitration over the law courts is in the matter of

procedure. The procedure is flexible and can be adapted to the convenience of the parties and the character of the dispute heard. The meetings can be set for a fixed time and place, suitable to all parties, so that they do not have to sit in a court room watching a trial list drag on while their time and patience are exhausted; and the hearings can be held as soon as the parties are ready to go on, instead of after they have waited for weeks or months while a court disposes of an over-crowded docket. When the hearing begins, if it is to be lengthy, it can be arranged that the case is heard piecemeal—all the plaintiff's witnesses one day and all the defendant's another, or all the out-of-town witnesses as soon as they arrive, or any other satisfactory arrangement, which no court would permit. Next, in presenting evidence, the rules of evidence (which are a tribute to the contempt of the law for the intelligence of juries) present no obstacle, but the arbitrator is entirely free to use his judgment as to what is credible and what is not; parties are free to waive any technical rule which they do not consider it necessary to enforce, and are more willing to do so when they are gathered in an arbitration room than when they face each other across a court. The evidence, too, is apt to be fresher, as the hearing can take place while all the persons to be heard remember all the matters vividly, or while the goods or property are still in the condition complained of. This is especially important in seasonal trades, where there is a rush of business at certain months in the year and a lull at others; the disputes arising out of one season's business can be cleared off and settled before the minds of the parties are distracted by the next season's effort. Again, there is no opportunity for the many technical interlocutory applications and appeals which courts allow; parties feel they must present their whole case and get the dispute settled, as the award is final.

In the fourth place there must be considered the beneficial effect of the flourishing condition of arbitrations upon the English business community. This shows itself in several ways. The first is that it has been found that the presence of an arbitration clause in a contract is more potent in warding off disputes than it is even in settling those that arise; the parties know that any dispute arising will be settled quickly and efficiently, and that prevents either of them who might be inclined, from picking trouble with the other for the sake of delay; it is the common experience of both law courts and arbitration rooms that a speedy trial is the worst enemy of litigation, and usually the defendant, if he knows he will suffer judgment at once, will try to save the costs. But apart from this, the presence of the arbitration clause gives the parties the feeling that they are not enemies or dealing at arm's length; the very fact that they agree beforehand to settle differences in an amicable way paves the way to an understanding, even in case of a difference, which makes a formal arbitration unnecessary. On the other hand, there are bona fide differences founded on conviction or fact, which no amount of mere good feeling will settle; often a business man is obliged to swallow these because "going to law" is, as he has discovered, too slow, too expensive and too much of a gamble; the possibility of arbitration, however, gives him an opportunity to claim his rights in even a small matter, and the result is a healthier condition in which there is no cause for bearing grudges or for grumbling because of injustice for which there is no redress. Finally, if an arbitration does take place, there is apt to be much less of that irritation and bad feeling between the parties which a trial at law engenders, with its publicity, its artificial hostility between counsel, and its traditions of the medieval tournament. No better evidence could be adduced of the general attitude of settlement and co-operation created by arbitration than the quasi-negotiability of some awards in ar-

bitration; each party in the chain of purchasers will honor the award and so it passes back to the original producer eliminating a lawsuit at each link of the chain.

The mutual and voluntary character of submissions to arbitration are in direct contrast to the compulsory nature of court litigation. In the law the rendering of exact justice in the matter at bar is a final aim. But in business the settlement of a given dispute is not ordinarily the most important thing. The big thing is the relationship between the parties. In its formal tribunals the law must ignore this preservation of relations between the parties, however momentous.

The voluntary character of arbitration affords a basis for successful continuance of business relations. Arbitration is thus seen as a constructive social function weaving into the fabric of commercial life to strengthen rather than sever its threads.

Arbitration, starting as an expedient, a makeshift, and in competition with the courts, has proved indispensable. Courts can never hope to acquire its virtues or to lessen its scope. The competitive element is disappearing. We can now look upon arbitration as being, not a makeshift, an irregular method of adjudication, but as a modern practice supplementing the field of official adjudication and making with the courts a more complete means for accomplishing a necessary work.

New ways of living and transacting business imply new machinery in the law. Society is constantly devising new tools to accomplish its work more economically. Private undertakings of a public nature are taken over, after a period of probation, and made part of government and law. Encouragement of arbitration is to be based on its own inherent worth, and with no thought that it will lessen the obligation now resting upon American courts to perform their work more efficiently. The two lines of advance can be made simultaneously and without jealousy.

Arbitration in United States

The foregoing sketch of the history of Commercial Arbitration in England indicates that this mode of adjudication is based upon a high degree of organization in the business world. It is only in recent years that American business has become organized and we have nowhere such a concentration of commercial activities as exists in London.

Sucess in arbitration depends a great deal upon mutual confidence and its practice needs to be encouraged and nursed along by trade organizations which possess some influence or control over individual traders. Once established it persists and grows even though the courts endeavor to match its best features of promptness, simplicity of procedure and economy.

In recent years a wonderful change has come over the business world in this country. Most lines of trade are now well organized. In scores of cities there is a measure of concentration. The field is ripe for developing voluntary modes of adjudication.

In New York City the Chamber of Commerce has, for several years, been active in encouraging arbitration. In fields of business in which organization is most thorough, notably stock and produce exchanges, arbitration has fully met the needs of members for a number of years. In the building trades in certain cities, owing to the entire unfitness of traditional methods of court procedure, arbitration has been practiced with entire success.

Another favorable environmental element has been supplied by the war and the sudden expansion of foreign trade. Foreign customers have learned of arbitration through trading with London, Paris,

Hamburg and other European cities. If it were only for the advantages accruing on jurisdictional grounds there would be sufficient incentive for resorting to arbitration.

So, in recognition of this need and the present opportunity, the International High Commission over two years ago brought about an agreement for arbitration between the Chamber of Commerce of the United States of America and the Chamber of Commerce of Buenos Aires.

The New York State Bar Association has a committee on Arbitration, growing out of its Committee on the Prevention of Unnecessary Litigation. It has established a long list of lawyer arbitrators, members of the Association, who are prepared to serve parties litigant.

The Credit Association of the Building Trades of New York, 120 Broadway, has made a marked success of arbitration. In a circular dated May 15, 1917, the method and results are concisely set forth. The Association follows original methods in bringing disputants together, whether both are members, or only one. The circular contains a record of work accomplished at a single meeting of the Executive Committee, which is highly illuminative. Among testimonials from members the following are especially quotable:

"We are more than pleased with the results and find that you have been a positive help and saving to us. Unlike courts of law, the Association leaves no bad taste. The propositions all seem to be handled with reasonable speed."

Bramhall-Deane Co., New York.

"Cooperative protection that insures having to do just what the contract calls for and also insures adjustment of disputes is a necessity. If each branch of the building industry were fully represented, there would be an automatic entire disappearance of the abuses in the trade, and one would feel that the millenium had arrived."

Craig and Brown, Brooklyn.

The Association has the following to say concerning the work:

"In the process of the investigations a large number of the complaints were found to be due to natural and honest differences of opinion with respect to the customs of the trades, interpretations of contracts, etc. In such instances it was only fair to establish a practice of inviting the parties against whom the complaints were lodged to agree to submit the disputes to the decision of our Executive Committee acting as an Arbitration Committee. Furthermore, it often transpired that an actual delinquent on finding that his oppressive and unfair dealings were about to be exposed through the relentless investigations, would at such stage almost invariably agree when represented at our hearings, to leave the decision of the case to the Committee. This willingness, besides being prompted by the natural feeling arising in men's minds when actually confronted by the influence of a Board of Conciliation, is increased on learning that arbitration will be decided by representative individuals in the industry who know many times more about building matters than men selected haphazard to serve as jurors in court cases. That the arbitrations are free from red tape and free from cost, also influences the agreement to abide thereby.

"Thus there has developed in our Association an arbitration service of unusual dimensions, highly respected by the nonmembers and enthusiastically favored by those members who have used it or have taken part in it as occasional members of the Committee.

"The addition of this arbitration and conciliation work to the labors of the Executive Committee has compelled it to be many times more active than the average governing board. To convey an idea of the enormous amount of work done, we have but to mention that 253 controversies were attended to by this Committee last year. This year's increased activity amongst the members, largely through the advertisement of this single feature of our efforts, is such that one or other of the three divisions of the Executive Committee is meeting every week and the number of controversies being handled is at the rate of 700 a year.

"It is desired to impress all with the fact that these hearings are entirely free from red tape; no legal documents are prepared or time wasted, yet the results are highly succesful; and, best of all, neither party pays a cent of expense. This informal arbitration service is free to every member and his customer. The Committeemen contribute of their time and talent for the good of the cause."

Progress in Illinois

The Chicago Association of Credit Men became active in promoting arbitration

about two years ago. They induced the legislature to revise the Illinois arbitration statute to conform to modern needs and especially to embrace an idea advanced by Chief Justice Harry Olson of the Municipal Court of Chicago.

The insistent need of the court (which has unlimited contract jurisdiction, and in which nearly all contract litigation in Cook County is tried) for a saving of time, was entirely consistent with the arbitration movement. Chief Justice Olson saw an opportunity for linking the court with arbitration in a way beneficial to both. Arbitration, with its expert triers of questions of fact, was seen to be positively superior to court procedure with its uninformed jurors and their reliance upon expert witnesses. The weak spot in arbitration appeared to be when mixed questions of law and fact were involved and recourse would need be had to a court if the questions of law were to be expertly disposed of.

This difficulty has been met in a way in England, but Chief Justice Olson believed a more direct and simple cooperation could be worked out. So the revised act was drafted with this in view, and under it questions of law are readily submitted to a court having jurisdiction of the subject matter. He announced preparedness to assign *ad hoc* for prompt disposition a judge of special qualifications. Under this system the court works hand in hand with arbitrators and the system promises to result in a very complete and perfect service.

It may be well at this point to print the Illinois revised act in full. It was adopted by the 1917 Assembly and took effect July 1, 1917.

An Act to revise the law in relation to abitrations and awards.

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: [Scope and Manner of Submission.] That all persons having requisite legal capacity may by an instrument in writing to be signed by them submit to one or more arbitrators to be named in the manner indicated by such writing, any controversy existing between them, and may, in such submission agree that a judgment of any court competent to have jurisdiction of the subject matter of such instrument, shall be rendered upon the award made pursuant to such submission.

Sec. 2. [Procedure.] The parties to such submission may by such submission designate the number of arbitrators, which number may be one or more as the parties shall agree; the manner in which they may be appointed in the first instance and vacancies caused by the refusal, incapacity or death of an appointee filled; the time and place of the hearing and the rules for the hearing of such controversy, not in conflict with the provisions of this act; the parties to such submission may include by reference in said written submission the published rules of any organization or association which rules shall thereby become a part of the contract of submission.

Sec. 3. [Submission Irrevocable.] A submission to arbitration shall, unless a contrary intention is expressed therein, be irrevocable.

Sec. 4. [Subpoenas and Witnesses.] Said arbitrators or any of them shall have the power to administer oaths, subpoena and examine witnesses, to issue subpoenas *duces tecum* requiring the production of such books, papers, records and documents as may be evidence of any matter under inquiry and to examine and inspect the same; service of such subpoena shall be made by any sheriff or constable or other person; the fees of witnesess for attendance and travel shall be the same as the fees of witnesses before the circuit courts of the State; any court of this State, having jurisdiction of the subject matter of the submission or any judge thereof upon the application of such arbitrators or any of them, either in term time or vacation may compel attendance of witnesses, the production of books and papers and giving of testimony before said arbitrators by attachment for contempt or otherwise in the same manner as the production of evidence may be compelled before said court.

Sec. 5. [Depositions.] The said arbitrators may authorize the taking of depositions without a commission in the same manner as may be provided by law for the taking of depositions in suits pending in courts of record of this State.

Sec. 6. [Opinions of the Court on the Law.] The arbitrators may, of their own motion and shall by request of a party

(a) at any stage of the proceedings submit any question of law arising in the course of the reference for the opinion of the court stating the facts upon which the question

arises and such opinion when given shall bind the arbitrators in the making of their award

(b) state their final award as to the whole or a part of the reference in the form of a conclusion of fact for the opinion of the court on the questions of law arising and such opinions shall finally conclude the proceeding, except as by this act otherwise provided.

Sec. 7. [Award—Form—Partial Award.] The award of the arbitrators, or a majority of them, shall be drawn up in writing and signed by the arbitrators or a majority of them; the award shall definitely deal with all matters of difference in the submission requiring settlement, but the arbitrators may, in their discretion, make a partial award or awards, which shall be enforceable in the same manner as the final award; upon the making of such award, the arbitrators shall deliver a true copy thereof to each of the parties thereto without delay.

Sec. 8. [Filing of Award.] If either of the parties neglect to comply with any partial or final award, made by the arbitrators, the other party may, at any time within one year from the time of such failure, file such award, together with the submission in court.

Sec. 9. [Judgment on Award.] The party filing such award may, by giving ten days' notice of his intention to the opposite party, and if no legal exceptions are taken to such award, have judgment thereon, as on the verdict of a jury; upon any legal exceptions taken, the findings of fact by the arbitrators shall be conclusive; successive judgments in the same case may be entered on successive awards of the arbitrators on the subject matter of the submission together with the costs of arbitration and the court, and execution may issue as in other cases.

Sec. 10. [Enforcement of Award.] When the award requires the performance of any act other than the payment of money, the court rendering such judgment shall enforce the same by rule, and the party refusing or neglecting to comply with such rule may be proceeded against by attachment or otherwise as for a contempt.

Sec. 11. [Setting Aside or Remitting Award.] If any legal defects shall appear in the award of such proceedings, or if it shall appear that the award is not sustainable under the opinions of the court upon questions of law under section 6 of this act, the court may set aside such award, or remit the matters contained in the said award to there consideration of the said arbitrators; or if it shall appear, on oath or affirmation that said award was obtained by fraud, corruption or other undue means, or that such arbitrators misbehaved, said court may set aside such award.

Sec. 12. [When Court May Correct Award.] If there be any evident miscalculation or misdescription, or if the arbitrators shall appear to have awarded upon matters not submitted to them, not affecting the merits of the decision upon the matters submitted, or where the award shall be imperfect in some matters of form, not affecting the merits of the controversy, and where such errors and defects, if in a verdict, could have been lawfully amended or disregarded by the court, any party aggrieved may move the court to modify or correct such award.

Sec. 13. [When Motion to Set Aside, or Modify, Must Be Made.] Applications to set aside, modify or amend or remit such award, as provided in sections 11 and 12 of this act, must be made before the entry of final judgment on such award: Provided, nothing herein contained shall be so construed as to deprive courts of chancery of their jurisdiction, as in other cases.

Sec. 14. [Errors and Appeals.] Writs of error and appeals may be taken from any decision of the court upon questions of law under section 6 of this act, or matters arising in the course of the proceedings, by the party feeling himself aggrieved, as in other cases; and if the case shall be upon such writ of error or appeal remanded, such further proceedings shall be had as the nature of the case may require.

Sec. 15. [Compensation—Fees.] The parties may, in the submission, agree upon the amount of compensation to be paid to the arbitrators and the terms of the payment of the same; unless so agreed, each arbitrator shall be allowed, for every day's attendance to the business of his appointment $3.00, to be paid in the first instance by the party in whose favor the award shall be made, but to be recovered of the other party with the other costs of suit, if the award or final decision shall entitle the prevailing party to recover costs. Sheriffs, constables, the bailiff of the Municipal Court of Chicago, clerks and justices of the peace shall be entitled to the same fees for services performed in relation to any arbitration, as shall be allowed by law for the like services in their respective courts.

Sec. 16. [Arbitrators Compelled to Duty.] Arbitrators may be compelled, by order of the court, to proceed to a hearing of the submission, and to make report without unnecessary delay.

Sec. 17. [Definitions.] In this Act unless the context or subject matter otherwise requires,

"Court," means the court named in the

submission, and if no court be named, any court having jurisdiction of the subject matter, to which application is made or proceedings had on a submission.

"Submission" means a written agreement to submit differences to arbitration, whether such differences be in whole or in part in suit or not in suit.

Sec. 18. [Repeal.] An act to revise the law in relation to arbitrations and awards, approved April 29, 1873, in force July 1, 1873, except as herein re-enacted, is hereby repealed, but this section shall not be construed so as to affect any right, actions or causes of action that may have accrued or be pending when this act shall take effect.

In Chicago the work begun by the Credit Men's Association has been taken over by the newly formed Central Committee to Promote Commercial Arbitration, of which Chief Justice Olson is chairman and Abram E. Adelman, Esq., 1518 Ashland Block, is secretary, and the following are members:

R. B. Beach, general manager, Chicago Association of Commerce.

John R. Mauff, secretary, Board of Trade of Chicago.

H. H. Merrick, general manager of credits, Armour & Company.

M. S. Green, credit manager, Consumers Company.

C. W. Woodward, manager, Chicago Building Material Credit Bureau.

C. R. Dickerson, secretary of Chicago Association of Credit Men.

Herbert Harley, secretary of American Judicature Society.

H. W. Hardy, treasurer, Libby, McNeill & Libby.

Sol Westerfeld, vice president, National Association of Retail Grocers.

The Central Committee operates by sending to trade associations an explanation of the advantages of arbitration and by requesting them to adopt a resolution like the following:

WHEREAS, the revised Arbitration Act of the State of Illinois provides a simple and practical method for adjudicating controversies arising in the course of business without the delay and expense attending court procedure, and without disrupting the relations existing between the parties to the controversy; and

WHEREAS, steps are being taken to encourage the practical and widespread use of arbitration, and this Association has been invited to participate and co-operate, therefore,

BE IT RESOLV..., that this Association establish a Committee on Arbitration with power to supervise arbitrations between its members, and between members and other persons, to promulgate a list of arbitrators, to co-operate with the Central Committee to promote Commercial Arbitration, and to adopt rules of arbitration, the first members of the Arbitration Committee are ..... Chairman and .... (insert four names) .....

The Secretary is hereby directed to notify said Central Committee of this action, at the earliest possible date.

When Secretary Adelman receives notice of the adoption of such a resolution he supplies the association with enough copies of a folder to supply all their members with practical information.

The Central Committee recommends to the associations adopting the practice the following form of submission after a dispute has arisen:

Know all men by these presents, that, whereas, a controversy exists between us, the undersigned parties to this instrument, which briefly stated, is as follows:

.....

That we, the undersigned, do hereby submit the said matter of controversy to arbitration, under the laws of the State of Illinois and the rules of the Central Committee to Promote Commercial Arbitration, of Chicago, Illinois, which are hereby incorporated in this submission.

In witness whereof, the parties hereto have hereunto set their hands and seals this ..... day of ....., 191..

..... (Seal)

..... (Seal)

For use in contracts the following form of submission is recommended:

All disputes at any time arising under, out of, in relation to, or in connection with this contract, or its construction or fulfillment, which the parties in interest may be unable to settle between themselves, shall be referred to arbitration under the laws of the State of Illinois and the rules of the Central Committee to Promote Commercial Arbitration, of Chicago, Illinois, which are hereby incorporated in this contract.

The following associations have adopted arbitration under the invitation extended:

Master Plumbers' Asso. of Chicago.
Paint, Oil and Varnish Club of Chicago.
Chicago Grocers' and Butchers' Asso.
Chicago Produce Trade and Credit Asso.
Chicago Face Brick Asso.
North Side Commercial Asso. of Chicago.
Wholesale Florists' Credit Asso. of Chicago.
American Asso. of Creamery Butter Manufacturers.
National Asso. of Advertising Specialty Manufacturers.

The Chicago Board of Trade has employed arbitration with entire success for over fifty years. Indeed, no other method would avail in adjusting disputes between members of a trading association of this kind.

The Central Committee is continuing its missionary work and also stands ready to assist in actual arbitrations when called upon. It recommends the adoption of the following standard rules of procedure which have been drafted to fit the Illinois statute:

ARBITRATION RULES AND REGULATIONS of the CENTRAL COMMITTEE TO PROMOTE COMMERCIAL ARBITRATION of Chicago, Illinois.

I.—GENERAL.

RULE 1.

The following rules, except so far as they are expressly varied by the terms of the submission, are deemed to be incorporated in every submission to arbitration under the rules of the Central Committee to Promote Commercial Arbitration.

RULE 2.

If reasonably possible the work, acts, deliveries or payments called for by a contract out of which there arises a dispute for arbitration, shall continue during the arbitration proceedings, without prejudice to the right of either party to succeed; perishable goods may, at the discretion of the arbitrators, be sold for the best price obtainable and the proceeds shall stand in their place.

RULE 3.

No right of action upon any differences referred to in a submission to arbitration shall arise until after reference and award, and the obtaining of an award by arbitration shall be a condition precedent to the right of any party to sue another in respect of any claim arising out of such differences.

RULE 4.

The arbitrators have jurisdiction to decide a dispute as to whether or not a contract has been made.

RULE 5.

If the arbitration is upon differences which are the subject of a pending lawsuit, matters and persons outside the lawsuit may be included in the reference.

RULE 6.

Death or insolvency of a party shall not revoke an agreement to arbitrate or an arbitrator's authority, but the arbitration shall be proceeded with by the party's legal personal representatives.

II.—SERVICES OF LOCAL COMMITTEE AND CENTRAL COMMITTEE.

RULE 7.

When there has been an agreement to submit future differences to arbitration, either party may, upon the occurring of any dispute, apply to the Arbitration Committee of his Association, or to the Central Committee to Promote Commercial Arbitration, for its services. With such application he shall file a copy of the arbitration clause in the agreement, and shall make a deposit of such sum as the Committee shall require, to be disbursed by the Committee for his account in payment of arbitrators or other fees and expenses. The Committee shall thereupon notify the adverse party of the application, calling his attention to Rule 16 of these rules, and requesting a deposit of the same amount.

RULE 8.

When the agreement is to submit existing differences to arbitration the agreement shall be filed together with a deposit as required in the preceding rule.

RULE 9.

The Committee to which application is made shall co-operate with parties to ar-

bitration in obtaining the appointment of arbitrators, and shall send out notice of such appointment to the parties interested. The said Committee shall also send out notices of all meetings and hearings in the arbitration at least three days in advance to the arbitrators, parties, witnesses and others entitled to attend, and shall deliver such papers as it is required by these rules to deliver.

RULE 10.

Any notice to a party may be mailed to him at his principal place of business.

RULE 11.

In case of any question concerning the interpretation of these rules, the decision of the Central Committee to Promote Commercial Arbitration shall be conclusive.

RULE 12.

The Arbitration Committee of any trade or Association, and the Central Committee to Promote Commercial Arbitration shall fix a scale of fees payable for their services in connection with the course of an arbitration, and for the payment of arbitrators.

III.—ARBITRATORS.

RULE 13.

If no other mode of reference is provided, the reference shall be to one arbitrator, but the parties may agree in writing that the reference shall be to three arbitrators, one named by each party and the third named by those two.

RULE 14.

The appointment of an arbitrator shall be made in writing, signed by the party appointing, and filed with the Local Association or the Central Committee, in case its services have been called upon, together with any proof of power to appoint.

RULE 15.

If the reference be to two arbitrators, the two arbitrators may appoint a third arbitrator before entering upon the reference.

RULE 16.

In any of the following cases:

(a)—If either party fails to appoint an arbitrator, either originally or to fill the vacancy caused by the refusal, incapacity or death of an appointee;

(b)—If the parties or two arbitrators fail to concur in the appointment of a single arbitrator, either originally or to fill the vacancy caused by the refusal, incapacity or death of an appointee;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint (or concur in the appointment of) an arbitrator.

If the appointment is not made within seven business days after the service of the notice, the Committee of the Local Association or the Central Committee to Promote Commercial Arbitration may, on application by any party in interest, appoint an arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

RULE 17.

No person who has any financial interest in any of the parties to an arbitration, or in the subject matter of the arbitration, shall be eligible to be an arbitrator in the arbitration.

Before entering upon his duties each arbitrator who may have been appointed under these rules shall take the following oath:

OATH OF ARBITRATOR.

State of Illinois,
County of Cook,
City of Chicago. } ss.

I,.....who have been appointed arbitrator by the above instrument of submission to arbitration, being duly sworn on oath say that I will faithfully and fairly hear, examine and determine the cause and controversy mentioned in the foregoing instrument of submission to arbitration, according to the principles of equity and justice, and make a just and true award to the best of my understanding.

Subscribed and Sworn to before me this .....day of.....A. D. 191....

.....

IV.—PREPARING FOR HEARING.

RULE 18.

Within 7 days after the naming of an arbitrator by or for him, the party applying for arbitration shall write out a clear and concise statement of what he claims, which, together with a copy of any contract, corres-

pondence or vouchers relating to the same, shall constitute his claim; and shall forward to the Secretary of the Local Association, or its Arbitration Committee, or of the Central Committee, if said Committee shall have been called upon, copies of his claim in number sufficient for said Secretary to deliver one to the adverse party and one to each arbitrator.

RULE 19.

Within 7 days after the receipt of the claim the adverse party shall write out a similar statement, which shall constitute his answer, and he shall forward to the said Secretary copies of his answer in like manner for the like purpose.

RULE 20.

When the claim and answer have been delivered, or the time has elapsed when they ought to be delivered, the arbitrators shall fix a time for a preliminary meeting, of which notice shall be sent to all parties. At this meeting the arbitrators shall indicate, either at their own instance or at the request of a party:

(1)—Upon what points, if any, they will require a fuller statement.
(2)—Upon what points, if any, they desire to hear evidence.
(3)—The manner in which the evidence shall be given.
(4)—The times and places for hearings, if any.
(5)—Any other directions as to the form and course of the proceeding.

V.—HEARING.

RULE 21.

The evidence in an arbitration may be taken and the procedings shall be conducted in a mercantile way without regard to legal technicalities.

RULE 22.

Arbitration hearings shall be considered private, and no person shall be admitted without the consent of the parties, except the parties, their legal advisers, witnesses, and a representative of the Association whose Committee may have said hearings in charge, and no statement shall be given out to the press without the consent of both parties.

RULE 23.

Personal attendance of parties may be dispensed with if they agree to state their case completely in writing, either jointly or separately, and agree to accept the decision of the arbitrators on such statement. In such case the arbitrators may nevertheless call for additional evidence, unless the parties desire that no further evidence shall be taken.

RULE 24.

No hearing shall proceed in the absence of any arbitrator.

RULE 25.

If either party remains absent from a hearing, the arbitrators may, after adjournment and due notice to him, if he still remains absent, proceed in his absence.

RULE 26.

If either party intends to be represented by counsel at any hearing he shall give the adverse party at least 3 days' notice of his intention.

RULE 27.

The parties may agree that the evidence shall be given wholly or in part by affidavit.

RULE 28.

The arbitrators may, if they consider it necessary, order that any witnesses on a reference shall be examined on oath or affirmation.

RULE 29.

The arbitrators shall have power to obtain, call for, receive, and act upon, any such oral or documentary evidence or information (whether the same be strictly admissible as evidence or not) as they may think fit, and may order production of documents by one party for inspection by another at any time either before or at the hearing.

RULE 30.

In cases of technical difficulty a legal or other expert may be selected by the arbitrators to sit with them in an advisory capacity, or to testify as a witness at the hearing, or to assist them in framing their award.

RULE 31.

A stenographic report shall be made of such part of the proceedings as the arbitrators may deem necessary.

RULE 32.

Subject to these rules the arbitrators shall have full control over the procedure and the mode in which the arbitration shall be conducted.

VI.—POINTS OF LAW.

RULE 33.

In the following rules "Court" means the Municipal Court of Chicago, or any judge or branch thereof specially delegated to deal with arbitrations.

RULE 34.

The arbitrators may, of their own motion or by request of a party—

(a)—At any stage of the proceedings submit any question of law arising in the course of the reference, for the opinion of the court, stating the facts upon which the question arises and such opinion when given shall bind the arbitrators in the making of their award;

(b)—State their final award as to the whole or a part of the reference in the form of conclusions of fact for the opinion of the court on the questions of law arising and such opinion shall finally conclude the proceeding; subject only to any right of review permitted by law.

RULE 35.

The arbitrators shall have power, on behalf of the parties or any of them, to do all things necessary under the rules of the court for obtaining such opinions, including power to authorize the filing of any statement or any agreed case, and the entry of any appearance.

RULE 36.

Upon the consideration by the court of any question of law submitted under the previous rule the finding of facts by the arbitrators shall be conclusive.

RULE 37.

Each party reserves the right to revoke the authority of the arbitrators to act for him in the arbitration if, after request, they refuse to take steps to obtain the opinion of the court upon any point of law as provided in these rules.

VII.—AWARD.

RULE 38.

The arbitrators shall make their award in accordance with their own sense of the equities of the case, taking into consideration such trade customs and usages as may be applicable thereto.

RULE 39.

The award to be made by the arbitrators must definitely deal with all matters of difference in the submission requiring settlement, and it shall be binding on the parties and the persons claiming under them respectively, subject to any right of review permitted by law from a judgment entered on the award.

RULE 40.

The arbitrators shall make their award within one month after entering on the reference, unless within that time they give written notice to all parties naming an extension of time for making the award.

RULE 41.

The award shall be in writing and signed by the arbitrators concurring in it.

RULE 42.

When three arbitrators are appointed an award shall be valid which is concurred in by any two of them.

RULE 43.

Arbitrators need not sign arbitration documents in the presence of each other.

RULE 44.

The arbitrators may at any time, if, in their opinion, the circumstances require it, make a partial award, expressly reserving any further questions in the reference for a further award or awards by them.

RULE 45.

The award shall be deposited by the arbitrators with the Secretary of the Local Association or of the Central Committee, and a copy of it shall be delivered by the said secretary to each party.

RULE 46.

Any submission to arbitration or award

thereon may be filed or made an order or rule of, and judgment thereon may be entered in, any court in which it is sought to enforce an award.

RULE 47.

For the purpose of entering judgment the appointments of arbitrators, the claim and the answer, shall be deemed to be incorporated in the submission to arbitration.

VIII.—COSTS.

RULE 48.

The costs of the reference and award shall be completely in the discretion of the arbitrators who may direct by whom, and to whom and in what manner those costs or any part thereof shall be paid, and may settle the amount of costs to be so paid or any part therof.

RULE 49.

In deciding as to costs the arbitrators shall take into consideration the correspondence between the parties relating to the dispute, and their respective efforts to arrive at a fair settlement.

RULE 50.

The parties to any arbitration agree to be jointly and severally liable for all expenses properly incurred in the course of the proceedings, and to indemnify the Association having same in charge against any loss or liability of any kind arising directly or indirectly out of the arbitration.

Simplified Federal Procedure

While the pressure of more important concerns has deferred action on the bill authorizing the Supreme Court to adopt rules regulating the procedure in actions at law in the federal courts, the issue has been squarely raised by the majority report of the Senate Committee on Judiciary in favor of the plan and the minority report opposing it, and action on the bill at the next session is to be expected. Since a measure of presumption in favor of the bill arises from the indorsement of the American Bar Association, it is interesting to note the objections urged by the minority. Primarily the minority report advocates the principle embodied in the Conformity Act, urging the inconvenience to the lawyer who is compelled to observe one system of procedure in the state court and another in the federal court. To this it may be answered that while a large number of the states have abolished the distinction between law and equity procedure, equity practice is conducted in the federal courts under rules prescribed by the Supreme Court. The advantage of the change to an attorney whose practice extends into the federal courts of several states is minimized by the minority, who say: "Not one lawyer in a hundred ever goes beyond the bounds of his state to try a lawsuit." This is true enough perhaps as it is stated, but it certainly is not true that ninety-nine out of a hundred of the cases in federal courts are tried by attorneys resident in the state where the court is held, and that is the real point at issue. For instance, there are 198 cases reported in volume 240 of the *Federal Reporter*. In 45 of these, or approximately one in four, counsel residing in two or more states appeared. The suggestion that attorneys having federal business in states will "associate some local firm familiar with the other practice of the state" smacks somewhat of trade union ethics. Meanwhile no thought is taken of the judges of the federal Appellate Courts. A table prepared by a member of the Bar Association shows that in a three months' period taken at random over 49 per cent of the points decided by the federal courts related to practice. Aside from the crying need for a better system of practice which this discloses, it means that the judges of the Circuit Court of Appeals must spend much of their time in passing on practice questions arising under ten or a dozen separate systems. The waste of judicial time involved is obvious and is of itself a strong reason for a uniform federal procedure.—*Law Notes*, November, 1917.

Northwestern University Law School

(UNION COLLEGE OF LAW)

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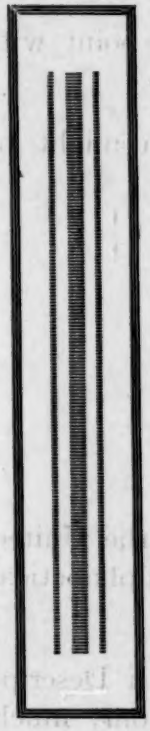

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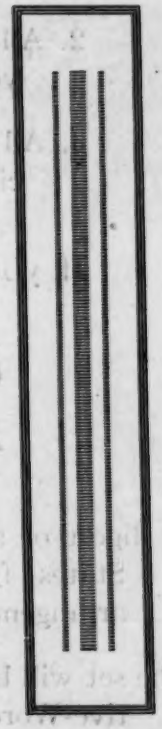

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